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SUBJECT: IPR ASPECTS OF TURKEY'S NEW CUSTOMS LAW

11. (SBU) Summary. The Turkish Parliament approved the long-awaited Customs Law on June 18. The law aims to fully harmonize Turkey's customs regime with that of the European Union, and it will now go to the President for signature. The law will take effect three months after it is signed and published in the Official Gazette. This cable examines the elements of the law that affect intellectual property rights (IPR) - analysis of other aspects of the law will follow septel. Overall, the law represents a fairly significant improvement in Turkey's IPR regime. Customs recordation for IPR will be greatly facilitated by the switch to an electronic filing system and the move to an annual (vice monthly) filing requirement. Settling IPR disputes out of court will also be made easier by new rules permitting Customs to destroy infringing goods upon mutual agreement of the rights holder and the infringer rather than requiring a court order. The law also enshrines in law existing regulations on the liability that Customs officers face if they either act on an IPR infringement or fail to act on a rights holder's request as well as confirming their power to act ex officio. Despite the overall improvement in the IPR picture under the law, there are some troubling exemptions for hand-carried goods and grey market goods. End summary.

12. (SBU) Turkey's new Customs Law, a longstanding action item from both the Economic Partnership Commission and the Trade and Investment Framework Agreement meetings, moved a big step closer to reality with its passage through Parliament on June 18. Assuming President Gul signs the legislation, it will enter into force three months after its publication in the Official Gazette, most likely at the end of Q3 or beginning of Q4. According to Hulya Erbay, Department Head for IPR at Turkish Customs, the law brings Turkey's customs regime fully into harmony with European Union rules (Note: Turkey often claims that harmonization has happened long before the EU agrees. End note.)

13. (SBU) Discussing the IPR elements of the new law, Erbay noted that the most significant change will be the move from a paper-based customs recordation system to an electronic one. Currently, IP rights holders must file a paper form every month at each Customs post in order to receive protection for their goods. This is costly and time-consuming. Under the new law, an electronic database will be enabled (the system architecture is already in place) that will allow for a single electronic filing to the main Customs headquarters once per year. All posts will be able to access this file electronically, reducing the burden on both rights holders and Customs officers. Eventually, the system will also be hooked into the National Judicial Network

Project (UYAP), allowing faster judicial access to Customs documentation.

¶4. (U) The law also facilitates the use of out-of-court settlements between rights holders and infringers by allowing Customs to destroy goods with the mutual consent of the rights holder and the infringer. Under the current system, Customs can only destroy goods with a court order (this will still be possible under the new law). Many rights holders prefer to negotiate out-of-court settlements as a way to avoid lengthy court battles and even lengthier appeals processes, but have been held back because Customs was required to return the goods to the infringer if there was no court case. These returned goods often ended up back on the market. Under the new system, the goods can be destroyed without the need for judicial intervention.

¶5. (U) In addition, the law clarifies the degree of liability faced by Customs officers who act on IPR violations and confirms the ability of officers to take ex officio action to seize infringing goods. Erbay explained that these rules were already codified in internal Customs regulations, but that the new law gives them a more permanent legal status. Officers who initiate in good faith an investigation or seizure for an IPR infringement, whether upon request of the rights holder or ex officio, will not be subject to any personal liability for damages to the goods' owner arising from the seizure (even if the goods turn out to be genuine). Conversely, if a rights holder informs Customs that there is a suspect shipment and the Customs officer fails to take action to seize the goods for inspection, they can be held liable for any resulting damages to the rights holder.

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Finally, Customs officers will not be held liable for failing to seize a shipment in the absence of a specific complaint from the rights holder or if the complaint comes after the goods have already cleared customs (i.e. goods that simply slip through the customs net will not create a potential tort action against the officers who failed to notice them).

¶6. (SBU) A troubling aspect of the law is the continuation of a specific exemption from seizure by Customs for IPR-infringing non-commercial goods carried in the personal effects of passengers. The law also creates a new exemption for genuine goods that are being distributed without the rights holder's permission or in a manner not consistent with the licensing agreement (e.g. a genuine Nike product distributed in Germany being imported into Turkey for unlicensed resale). The intent of these provisions appears to be to prevent Customs officers from wasting time trying to determine if a private individual's handbag is fake or not and to keep Customs officers from having to adjudicate whether a licensing agreement is being honored to the letter. The result, however, may be to encourage either small-scale smuggling of high-value counterfeit goods in passenger luggage or large-scale grey market resale of genuine goods. Despite these exemptions, the new Customs Law has to be seen as a significant strengthening of Turkey's IPR regime.

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